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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,473	10/23/2001	Sek Wan Tsang	12608.4US11	4057

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EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/047,473

Applicant(s)

TSANG, SEK WAN

Examiner

Kurt Fernstrom

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-20 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The invention as claimed recites a trailer portion of a toy vehicle comprising a power source, a first gear, a second gear and a driving gear for driving the first and second gears. It is not clear what the function of the claimed invention is. From the specification, it appears that the invention is intended to provide a means for driving a toy vehicle. However, the invention as recited in claim 17 does not recite an apparatus which functions in the intended manner. Applicant has argued that one of ordinary skill would know how to connect the gear assembly with the wheels of the vehicle. However, this connection appears to be critical to the operation of the device. Claim 19, as recited, lacks any reference to this feature, and thus lacks patentable utility.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between

the elements. See MPEP § 2172.01. The omitted elements are those which connect the gears to the wheels so as to enable driving of the vehicle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perhacs (US 3,594,951) in view of Kennedy. Perhacs discloses in Figures 1 and 2 and in column 2, line 62 to column 3, line 47 of the specification a trailer portion 14 of a toy vehicle comprising a bed 64 containing a motor 78, and first gear 94, second gear 96 and driving gear 98 operatively connected with the motor. From Figure 2, it is apparent that gears 94 and 96 rotate in opposite directions. Perhacs fails to disclose that the trailer comprises a power source; however, power sources are extremely well known, in fact virtually inherent, in toy vehicle devices comprising motors. Kennedy discloses in Figure 3 and in column 2, line 50 to column 3, line 61 a toy vehicle comprising a motor 27 and a power source and a gear assembly operatively connected with the motor comprising a first gear 30 and a second gear 31, and a driving gear 29 which drives both gears, wherein the first gear and the second gear move in opposite directions when driven by the driving gear. It would have been obvious to one of ordinary skill in

Art Unit: 3712

the relevant art to modify the device disclosed by Perhacs by providing a power source for the purpose of providing the power necessary to operate the motor.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perhacs in view of Kennedy, and further in view of Levy. Perhacs as viewed in combination with Kennedy discloses all of the limitations of the claim with the exception of the boss connected to the second gear. Levy discloses in Figure 5 and in column 6, lines 42-50 a toy vehicle comprising a plurality of gears and a vertical shaft 62 which is connected to one of the gears. The shaft operates in the same manner as a boss would, and the shaft 62 which engages boss 64 is considered to be interchangeable with a boss that engages a shaft. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Perhacs by providing a vertical boss attached to the second gear for the purpose of enabling driving of the wheels via the gear assembly.

### ***Response to Arguments***

Applicant's arguments with respect to claims 19-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

KF  
February 8, 2004

Kt fet  
Kurt Ferstrom